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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

HAO ZHANG,

Defendant.

) Case No. 5:15-cr-00106-EJD
)
) **DEFENDANT HAO ZHANG'S NOTICE**
) **OF MOTION AND MOTION TO**
) **SUPPRESS POST-ARREST**
) **STATEMENTS**
)
) Date: The parties request to set a date at the
) upcoming hearing on 11/30/2016.
) Place: Courtroom 4, 5th floor
) Dept: Hon. Edward J. Davila

NOTICE OF MOTION

PLEASE TAKE NOTICE that as soon as the matter may be heard before the Honorable Edward J. Davila, defendant Hao Zhang will and hereby does move the Court to suppress statements made by Professor Zhang during a custodial interrogation at Los Angeles International Airport. This motion is based on the instant notice, the memorandum of points and authorities, the attached exhibits, and the arguments made at the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION AND BACKGROUND FACTS**

On May 16, 2015, federal agents arrested Professor Hao Zhang at Los Angeles International Airport for the alleged theft of trade secrets. They arrested him as he arrived into Los Angeles from China. Professor Zhang was traveling with his wife to attend an academic conference in the United States. Professor Zhang was separated from his wife and taken to an interview room. He was then interrogated for three hours by Special Agents Young and Smith of the FBI.

At the beginning of the interrogation, the agents asked Zhang to read the FBI's pre-printed advice of rights form in English and Mandarin. The forms included statements notifying Professor Zhang that, if he could not afford an attorney, one would be appointed for him. In response, Professor Zhang told the agents that he could not afford an attorney. The agents then explained that Professor Zhang could have an appointed attorney *after* his initial appearance—making him believe that he could not have an attorney at the time of the interview. The relevant excerpt of the interview follows:

SA Young: Okay. Alright. So that is that form and then here is the other form we need done. So as you've probably seen or heard this before, this is what we call Advice of Rights Form. You may be familiar where we advise people their rights for when they have been arrested and, so, as Agent Smith was telling you earlier, we're going through these forms. This is kind of the transition for us where we can continue or if you choose to invoke your rights then, you know, we will respect, then, of course respect your rights, and stop the interview. But, I'm going to have you read each one of these lines and just be sure you understand everything. So, can you read out loud for us?

Zhang: Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have your lawyer with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questions, if you wish. If you decide to answer questions now without a lawyer present, you have a right to stop answering at any time.

SA Young: Okay. And, do you understand those words?

Zhang: Yeah.

1 SA Young: Okay, because we do, again, we do have a Mandarin form too if you'd like to
read it in that, as well.

2 [SA Young hands Professor Zhang a Mandarin advice-of-rights card, which Zhang reads
3 for about six seconds.]

4 Zhang: *No, I cannot afford a lawyer.*

5 SA Young: Well, *if you can't afford one, after your initial appearance*, one may be
6 appointed for you, but we want to make sure you understand these rights and
what this means.

7 Zhang: Yeah, yeah.

8 SA Young: And, also too, just to explain to you that even if you want to go ahead and sign
this now, meaning that you're willing to talk to us right now.

9 Zhang: Yeah. Yeah. That's okay.

10 SA Young: But, but, just so you'll know too, you can still, at any time, stop the interview
11 --

12 Zhang: Yeah. Yeah. Yeah.

13 SA Young: -- okay, and choose not to talk with us anymore. So, just know that that's
always . . . an option for you.

14 Zhang: Okay.

15 Transcript of Post-Arrest Interview ("Transcript"), attached as Exhibit A, at 5–6 (emphases
16 added).

17
18 This exchange clearly shows that Professor Zhang did not understand that he had a
19 right to an attorney at the time of the custodial interrogation. *See* Declaration of Hao Zhang,
20 attached as Exhibit B, at 4. He sought clarification of his right to counsel from the FBI
21 agents, saying he could not afford an attorney. Rather than saying that Zhang had the right
22 to an attorney at the time of the interview (including, most importantly, to advise him
23 whether to waive his right to remain silent and speak with the agents), Special Agent Young
24 said that Zhang could have an appointed attorney only *after* his initial appearance. Professor
25 Zhang is from China and is unfamiliar with the American justice system. The agents knew
this, having arranged to arrest him upon his arrival from China. The government's

1 miscommunication of Zhang’s *Miranda* rights renders his written waiver invalid and
2 warrants the suppression of his post-arrest statement.

3 II. LEGAL STANDARD

4 “The *Miranda* Court formulated a warning that must be given to suspects before they
5 can be subjected to custodial interrogation.” *Berghuis v. Thompson*, 560 U.S. 370, 380 (2010).
6 The first two *Miranda* protections concern a suspect’s right to silence: “He must be warned
7 prior to any questioning that he has the right to remain silent, [and] that anything he says can
8 be used against him in a court of law.” *Id.* (quoting *Miranda v. Arizona*, 384 U.S. 436, 479
9 (1966)). The remaining two *Miranda* protections—that is, the right to have a lawyer “during
10 questioning” and the right to court-appointed counsel—inform indigent individuals that they
11 have a right to appointed counsel during interrogations, not just in court. *See Miranda*, 384
12 U.S. at 479 (requiring warnings concerning both the right to consult an attorney and the right
13 to appointed counsel “prior to any questioning” where the arrestee cannot afford counsel).

14 A waiver of the right to counsel during such an interrogation is only valid if it is
15 “voluntary, knowing, and intelligent.” *United States v. Shi*, 525 F.3d 709, 727 (9th Cir. 2008).
16 To provide such a waiver, an individual must act “with a *full awareness* of both the nature of
17 the right being abandoned and the consequences of the decision to abandon it.” *Thompson*,
18 560 U.S. at 382–83 (emphasis added) (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).
19 And courts must closely scrutinize the waiver of constitutional rights: “[t]here is a presumption
20 against waiver, of which the Government bears the burden of overcoming by a preponderance
21 of the evidence.” *United States v. Crews*, 502 F.3d 1130, 1139–40 (9th Cir. 2007). To satisfy
22 this burden, “[t]he prosecution must [show] that the accused understood these rights,”
23 including the right to appointed counsel. *Thompson*, 560 U.S. at 384. Moreover, the question
24 of whether a defendant understood his rights involves the totality of the circumstances. *Crews*,
25 502 F.3d at 1140. Courts in the Ninth Circuit thus examine, among other factors, the
defendant’s mental capacity, whether the defendant signed a written waiver, whether the
defendant was advised of his rights through a translator, whether the defendant appeared to
understand his rights, whether the defendant’s rights were individually and repeatedly

1 explained to him, and whether the defendant had prior experience with the criminal justice
 2 system. *Id.* In cases where the arrestee is a foreign national, language barriers are highly
 3 relevant to a defendant's ability to understand his rights, too. *See United States v. Amano*, 229
 4 F.3d 801, 804–05 (9th Cir. 2000).

5 **III. ARGUMENT**

6 Special Agent Young affirmatively misled Professor Zhang into believing that, since
 7 he could not afford an attorney, he had no right to counsel at the time of the interview. Since
 8 Professor Zhang did not understand his constitutional right to counsel, he could not provide a
 9 voluntary, knowing, and intelligent waiver. His post-arrest statement, therefore, must be
 10 suppressed.

11 **1. Special Agent Young's "Initial Appearance" Statement Wrongly Informed 12 Professor Zhang that He Had no Right to Counsel During the Interrogation.**

13 When Zhang first read the *Miranda* form out loud in English, Special Agent Young
 14 asked Zhang whether he understood his rights. With no elaboration, Professor Zhang replied
 15 "[y]eah." Transcript at 5. Special Agent Young, nevertheless, asked Professor Zhang to read
 16 the Mandarin form. *Id.*; *see also* Video of Post-Arrest Interview, submitted to the Court as
 17 Exhibit C, at Session 6, 11:25:33. After viewing the Mandarin form, Professor Zhang stated
 18 "[n]o, I cannot afford a lawyer." Transcript at 5. That answer was totally non-responsive to
 19 any pending questions and showed that Zhang did not understand his right to appointed
 20 counsel. He was clearly concerned that he could not afford counsel. He has explained in his
 21 declaration that he believed that, because he could not afford counsel, he was not entitled to
 22 counsel for the interrogation. *See* Declaration of Hao Zhang at 4. But, even at the time of the
 23 interview, the agents must have known that Professor Zhang was worried and confused about
 24 his right to court-appointed counsel.

25 The agents could have resolved the misunderstanding with little difficulty. All that
 they had to do was tell Zhang that he had a right to have an attorney during any government
 interrogation *and* that his inability to afford an attorney did not prevent him from having one
 before answering questions. But they chose not to provide this explanation. Instead, they

1 buffaloed right past Zhang's confusion, saying that he could get a court-appointed attorney
2 after his initial appearance: "[w]ell, if you can't afford one, *after your initial appearance, one*
3 *may be appointed for you*, but we want to make sure you understand these rights and what this
4 means." *Id.* (emphasis added). Professor Zhang, again, responded "[y]eah, yeah." *Id.* Nor
5 did either of the agents follow up to explain that Zhang's right to counsel, including appointed
6 counsel, also extended to interrogations. Zhang clearly stated that he could not afford a lawyer.
7 He could not have understood that his right to free, appointed counsel extended to the pre-
8 appearance interview based on Special Agent Young's statement. Special Agent Young did
9 indicate to Professor Zhang that he could stop the interview, but that explanation speaks to his
10 right to silence, not his right to appointed assistance. *See* Transcript at 6 ("But, but, just so
11 you'll know too, you can still, at any time, stop the interview."). Zhang's belief that he did not
12 have a right to appointed counsel during the interrogation, therefore, went uncorrected.¹

13 *Miranda* forbids an interrogation from proceeding on such a flawed basis. Indeed, the
14 Supreme Court in *Miranda* recognized that "[t]he defendant who does not ask for counsel is
15 the very defendant who most needs counsel. We cannot penalize a defendant who, not
16 understanding his constitutional rights, does not make the formal request, and, by such failure,
17 demonstrates his helplessness. To require the request would be to favor the defendant whose
18 sophistication or status had fortuitously prompted him to make it." *See Miranda*, 384 U.S. at
19 471; *see also Sessoms v. Grounds*, 776 F.3d 615, 621–22 (9th Cir. 2014) (en banc)
20 (summarizing the psychological pressures that the *Miranda* Court described). As a result, the
21 Court held that "an individual held for interrogation must be ***clearly informed that he has the***
22 ***right to consult with a lawyer and to have the lawyer with him during interrogation.***"

23 ¹ When viewed in connection with the cursory administration of the *Miranda* warnings,
24 this failure to correct Professor Zhang's confusion over his right to appointed counsel during
25 the interrogation is even more egregious. Before advising Professor Zhang of the *Miranda*
warnings, Agent Young chose to review another form that Professor Zhang was required to
sign, the notice to the Chinese Consulate of his arrest. Then, she immediately transitioned to
discuss "the other form we need done," which was the advice of rights form, and stated that
Zhang had "probably seen or heard this before." After qualifying the advice of rights form
with those statements, Agent Young requested that Professor Zhang recite the *Miranda*
warnings out loud, rather than reading him his rights. This perfunctory review of the *Miranda*
warnings did not adequately advise Professor Zhang of his rights.

1 *Miranda*, 384 U.S. at 471 (emphasis added). The warnings given to Professor Zhang did not
2 satisfy this basic criterion. As explained above, Special Agent Young’s statement regarding
3 Professor Zhang’s initial appearance incorrectly stated that the right to counsel applied only at
4 some time after the interrogation had been concluded. After reading the English form and
5 scanning the Mandarin translation, Zhang said “[n]o, I cannot afford a lawyer,” indicating that
6 he did not understand either form’s explanation that he had a right to a lawyer at the
7 government’s expense and/or that he could invoke that right before he was interrogated by the
8 FBI agents. Transcript at 5. Although Zhang next learned through Special Agent Young that
9 “[a lawyer] may be appointed for you,” the most reasonable inference from Special Agent
10 Young’s statement that this would happen “after your initial appearance” is that the right did
11 not apply to the interrogation. *Id.* That, of course, is not the law.

12 The Supreme Court has already stated that police violate *Miranda* when they tie a
13 suspect’s right to counsel to some future court appearance. In *California v. Prysock*, 453 U.S.
14 355, 358 (1981) (per curiam), the Supreme Court considered a *Miranda* warning that informed
15 the defendant of his right to counsel at the time of the interrogation and the right to court-
16 appointed counsel. The warning, however, did not explicitly state that the defendant could
17 have court-appointed counsel at the time of the interview. *Id.* at 358–59. The Supreme Court
18 found that the warning was nevertheless valid. *Id.* at 361. In so doing, the Supreme Court
19 noted that the police did not say anything to suggest that court-appointed counsel could only
20 be provided in the future, after the interrogation. It noted that “this is not a case . . . in which
21 the offer of an appointed attorney was associated with a future time in court.” *Id.* (quotation
22 omitted). The Supreme Court indicated that police would violate *Miranda* “if the reference to
23 the right to appointed counsel was linked with some future point in time after the police
24 interrogation.” *Id.* at 360. Such a linkage, the Court reasoned, would “not fully advise the
25 suspect of his right to appointed counsel before such interrogation.” *Id.*

26 The Supreme Court in *Prysock* cited two cases to drive home its reasoning that *Miranda*
27 forbids warnings that tie the appointment of counsel to a future event. First, the Supreme Court
28 cited *United States v. Garcia*, 431 F.2d 134 (9th Cir. 1970) (per curiam), as properly finding a

1 warning inadequate when it advised the defendant that she could “have an attorney appointed
2 to represent [her] when [she] first appear[ed] before the U.S. Commissioner or the Court.”
3 *Prysock*, 453 U.S. at 360. Second, the Supreme Court cited *People v. Bolinski*, 260 Cal. App.
4 2d 705, 718 (1968)). In that case, the court rejected a *Miranda* warning informing a defendant
5 that “if he was charged . . . he would be appointed counsel” and that he would be appointed
6 counsel by a California court once he was transferred to that state. *Id.* The Supreme Court
7 stated that the warnings in *Garcia* and *Bolinski* were inadequate because they improperly
8 suggested that the right to counsel (including court-appointed counsel) did not attach until after
the interrogation. *Prysock*, 453 U.S. at 360.

9 That is exactly what happened in this case. When confronted with Professor Zhang’s
10 statement that he could not afford an attorney, Special Agent Young said that Zhang could get
11 a court-appointed lawyer in the future when he had his initial appearance in court—the very
12 admonition that the *Prysock* Court held was improper. This statement violated *Miranda* and
13 rendered Professor Zhang’s waiver unknowing and unintelligent.²

14 This conclusion is not altered by the fact that Zhang read a correct version of the
15 *Miranda* warnings in English and skimmed a Mandarin translation. Professor Zhang’s reading
16 of those forms occurred *before* his statement that he could not afford a lawyer and *before*
17 Special Agent Young’s explanation that Zhang could receive appointed counsel at his initial
18 appearance. The Ninth Circuit has held that confusion resulting from one incorrect warning
19 may taint a waiver even if the government also provides correct warnings at another point in
20 time. Specifically, in *United States v. San Juan-Cruz*, 314 F.3d 384 (9th Cir. 2002), border

21 ² Certainly, law enforcement need not convey the *Miranda* warnings with laser
22 precision. See *Florida v. Powell*, 559 U.S. 50, 60 (2010) (noting that “[t]he four warnings
23 *Miranda* requires are invariable” but that the “Court has not dictated the words in which the
24 essential information must be conveyed”). This is not a case, however, where law enforcement
25 adequately conveyed the gist of the warnings. Rather, this is a case in which a defendant was
affirmatively mislead into believing that he would only have the right to counsel upon his
initial appearance in court. Because Professor Zhang has no experience with the American
criminal justice system, he could not know what his rights were without being clearly told so.

1 patrol agents arrested the defendant and advised him of his *administrative* rights, which
2 includes the right to counsel but not the right to court-appointed counsel. *Id.* at 386. The police
3 later advised the defendant that he could face criminal charges. *Id.* At that time, they gave
4 him a complete *Miranda* warning, including the right to court-appointed counsel. *Id.* at 386–
5 87. On appeal, the defendant argued that the government’s explanation of his administrative
6 warnings—including the statement that he did not have the right to appointed counsel—made
7 the *Miranda* warnings confusing, as the two sets of warnings were inconsistent. *Id.* The Ninth
8 Circuit agreed. *Id.* at 389. In relevant part, the court reasoned that “[f]rom [the defendant’s]
9 perspective, it was entirely unclear what the nature of his rights was under the Fifth
10 Amendment. Specifically, [the defendant] could not reasonably ascertain from the warnings
11 provided to him by the Government whether he could or could not retain the services of an
12 attorney for free.” *Id.* at 388. The Ninth Circuit held that “[w]hen a warning, not consistent
13 with *Miranda*, is given prior to, after, or simultaneously with a *Miranda* warning, the risk of
14 confusion is substantial, such that the onus is on the Government to clarify to the arrested party
15 the nature of his or her rights under the Fifth Amendment.” *Id.* at 389.

16 Other courts have also held that government agents must clarify a defendant’s rights
17 where the explanation of the rights was confusing or where the defendant asked a question
18 about the rights. In *United States v. Al-Saimari*, 982 F. Supp. 2d 1285 (D. Utah 2013), for
19 example, agents advised the defendant of his rights and asked whether he wanted to talk. The
20 defendant said “I don’t know, you know. I’m just surprised, you know.” *Id.* at 1287. The
21 agent then reiterated that he needed a “yes or a no” answer.” *Id.* That follow-up response,
22 according to the district court, was insufficient, rendering the *Miranda* warnings invalid. *Id.*
23 at 1290–91. And in considering the implications of its decision, the court reasoned that “the
24 Fifth Amendment merely demands that an officer ask follow-up questions as necessary to
25 establish a knowing and voluntary waiver when, as was the case with Mr. Al-Saimari, a suspect
expresses or manifests confusion, or fails to state affirmatively that he understands the *Miranda*
warnings.” *Id.* at 1292; *see also United States v. Botello-Rosales*, 728 F.3d 865, 867 (9th Cir.
2013) (“That officers had previously administered correct *Miranda* warnings in English to [the

1 defendant] does not cure the constitutional infirmity [in the defective warnings].”).

2 The reasoning from those cases yields the same conclusion here. Special Agent Young
3 did what the Supreme Court in *Prysock* said was improper—she tied Professor Zhang’s right
4 to court appointed counsel to a future court proceeding. Special Agent Young also made the
5 same error that the agents made in *San Juan-Cruz*—she provided two inconsistent warnings
6 without clarifying Professor Zhang’s constitutional rights. Finally, she made the same error as
7 occurred in *Al-Saimari*—when Professor Zhang expressed confusion about his warnings, she
8 failed to ensure that Professor Zhang understood his rights. Professor Zhang’s post arrest
statement, therefore, must be suppressed.

9 **2. *Duckworth v. Eagan* Is Inapplicable to the Facts of this Case.**

10 The Supreme Court’s decision in *Duckworth v. Eagan*, 492 U.S. 195 (1989), does not
11 support a different conclusion. In that case, agents issued a *Miranda* warning notifying the
12 defendant that a lawyer “will be appointed for you, if you wish, if and when you go to court.”
13 *Id.* at 198 (emphasis omitted). The defendant challenged that warning, citing the Supreme
14 Court’s holding in *Prysock* and arguing that the warning improperly tied the appointment of
15 counsel to a future event. *Id.* at 205. The Supreme Court rejected the defendant’s argument
and upheld the validity of the *Miranda* waiver.

16 Importantly, the Supreme Court noted that the *Miranda* warning at issue contained
17 other language notifying the defendant that, although he had a right to an attorney **during the**
18 **interview**, court-appointed counsel could not be obtained until his appearance in court.
19 Specifically, the agents in *Duckworth* told the defendant that he had a right to an attorney
20 during the questioning but that “we have no way of giving you a lawyer, but one will be
21 appointed for you, if you wish, if and when you go to court.” *Id.* at 198. In this case, Special
22 Agent Young offered no such explanation. She did not explain that, although Zhang had a
23 right to appointed counsel at the time of the interrogation, his right could not be effectuated
24 until his court appearance. Instead, when Zhang explained that he could not afford counsel,
25 Special Agent Young simply stated “if you can’t afford one, after your initial appearance, one
may be appointed for you”—making Professor Zhang believe that his right to an attorney arose

1 only *after* his initial appearance. She said nothing to make it clear that he had a right to counsel
2 during the interrogation but court-appointed counsel was simply not available at the time. She
3 made Professor Zhang believe that he had no right to court-appointed counsel until after his
4 initial appearance.

5 And, it does not matter that the written *Miranda* warnings previously given to Professor
6 Zhang stated that he had a right to counsel during the interview. Zhang clearly did not
7 understand his right to counsel after reading them. His ability to afford counsel was the only
8 issue that he raised. As explained above, when confronted with this obvious confusion, Special
9 Agent Young was required to inform Zhang that he had a right to court-appointed counsel at
10 the time of the interview but that counsel could not be appointed until later. She made no effort
11 whatsoever to ensure that Professor Zhang understood this. Professor Zhang's question and
12 Special Agent Young's inaccurate response prevents a finding that Zhang provided a knowing
13 waiver.

14 *Duckworth* is also inapplicable because the warning in that case notified the defendant
15 that, even though appointed counsel was not immediately available, he could still stop the
16 interview until he could speak to counsel. Indeed, the Supreme Court identified this part of
17 the warning in distinguishing *Prysock*. Specifically, the Supreme Court explained that *Prysock*
18 was inapplicable because the *Duckworth* warnings notified the defendant that he had the right
19 to counsel "before the police asked him questions" and because they "stated his right to stop
20 answering questions at any time *until he talked to a lawyer.*" *Id.* at 205 (internal quotations
21 omitted; emphasis added). In this case, Special Agent Young's *ad hoc* explanation of Professor
22 Zhang's rights did *not* include this information. She made it appear that Zhang had the right
23 to a lawyer only after his court appearance, rather than at the time of the interview. And, she
24 totally failed to notify him that he could stop any interrogation until he talked to a lawyer.
25 Special Agent Young said that Zhang could stop the interview at any time. (That is, that he
had the right to remain silent.) But, she did not say that he could do so for the purpose of
speaking with a lawyer. (That is, that he had a right to counsel during the interrogation.) This
omission—following her statement that Zhang could only have a court-appointed attorney after

1 his initial appearance—reaffirmed Professor Zhang’s inaccurate belief that he had no right to
2 court-appointed counsel at the time of his interrogation. And again, the government cannot
3 rest upon the previous written warnings as Professor Zhang clearly did not understand them
4 and Special Agent Young’s explanation was misleading.

5 Finally, there was no evidence in *Duckworth* that the defendant had any difficulty
6 understanding English. Professor Zhang, on the other hand, was born and raised in China. His
7 primary language is Mandarin. The fact that Special Agent Young explained Professor
8 Zhang’s right to counsel in English, therefore, only made matters worse. Professor Zhang
9 questioned his right to counsel after reading the Mandarin advice-of-rights card, indicating that
10 he did not understand the English form. The Ninth Circuit has recognized that language
11 barriers present challenges above-and-beyond the normal pressures of an inherently coercive
12 interrogation. *See Amano*, 229 F.3d at 804–05 (listing additional factors that courts must
13 consider where language difficulties are present). In cases where a foreign national challenges
14 the adequacy of *Miranda* warnings, courts incorporate into the analysis factors such as
15 “whether the defendant signed a written waiver; whether the advice of rights was in the
16 defendant’s native language; whether the defendant appeared to understand those rights; [and]
17 whether the defendant had the assistance of a translator.” *Id.* (quoting *United States v. Garibay*,
18 143 F.3d 534, 538 (9th Cir. 1998)). Also relevant, according to *Amano*, is “whether the
19 defendant’s rights were explained painstakingly . . . and whether the defendant had experience
20 with the American criminal justice system.” *Id.*

21 Professor Zhang does not suggest that the language barrier was so great that it alone
22 would warrant suppression. But, his inability to fully understand the nuance of his
23 constitutional rights as a result of his difficulty understanding English made the inaccurate
24 warning that Special Agent Young provided all the more problematic. The agents must have
25 known this and certainly had an obligation to avoid it. They knew Zhang was a Chinese
national and that he was living in China. They knew when they were going to arrest him. They
had a Mandarin form available, indicating they anticipated a possible language barrier. But,
they made no effort to obtain an interpreter. The video recording shows that Professor Zhang

1 had difficulty understanding the agents. He offered the response “yeah” to almost every
 2 question. Nevertheless, Special Agent Young made no effort to ensure that Professor Zhang
 3 understood his constitutional rights. Instead, she interrupted him repeatedly to push him along
 4 into waiving his rights. The agents knew that Zhang had no experience with the United States
 5 criminal justice system. It is clear at the start of the interview that Professor Zhang has no idea
 6 what is happening to him. This is re-affirmed at the end of the interview when Professor Zhang
 7 first realizes that he has been arrested. The Ninth Circuit in *Amano* indicated that courts must
 8 consider whether the government “painstakingly” explained a defendant’s rights. 229 F.3d at
 9 805. That certainly did not happen here, as Special Agent Young offered a confusing and
 misleading statement regarding Zhang’s right to counsel.

10 A waiver can never be knowing and intelligent if the government obfuscates the scope
 11 of a critical *Miranda* right. In light of the agents’ complete failure to explain Professor Zhang’s
 12 rights, Special Agent Young’s affirmatively misleading statement, and Zhang’s lack of
 13 familiarity with the criminal justice system, the government cannot satisfy its burden of
 14 proving that it adequately informed Zhang of his right to have counsel at his side during the
 15 interrogation. Professor Zhang respectfully requests a hearing so that he can present testimony
 16 on these matters as well as additional testimony concerning his confusion at the time of the
 defective *Miranda* warnings.

17 IV. CONCLUSION

18 For the reasons stated above, the Court should suppress all statements that Professor
 19 Zhang made during his custodial interrogation on May 16, 2015.

20
 21 Date: November 22, 2016

Respectfully submitted,

22
 23 /s/ Michael L. Brown

24 Michael L. Brown

25 Attorney for Defendant Hao Zhang